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JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 599.

BILL WILLIAM PROHOROFF,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR RECONSIDERATION.

J. B. TIETZ,
410 Douglas Building,
South Spring and Third Streets,
Los Angeles 12, California,
Attorney for Petitioner.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3030

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 399.

BILL WILLIAM PROHOROFF,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR RECONSIDERATION.

To the Supreme Court of the United States:

Comes now the petitioner, by his attorney, and files this, his Petition for Reconsideration of the Order heretofore entered by this Court denying his petition for writ of certiorari.

Petitioner respectfully urges the Court to reconsider its action for the following reason:

Petitioner had argued in his Petition for a Writ of Certiorari for a relaxing of the rule requiring a Selective Service System registrant who becomes a defendant in a prosecution for a draft law violation to show he had exhausted his administrative remedies as a prerequisite to asking judicial relief.

The Brief for the United States, in reply to petitioner's argument, urged: "He does not specify here what these mitigating circumstances were and the record reveals none." (Govt. Brief; p. 4). Since petitioner had no opportunity, under the rules, to point out the error of this comment; this opportunity is used, and this petition, under the rule, is restricted to the point involved.

The mitigating facts, justifying relaxing of the rule, are set forth in the Petition for a Writ of Certiorari, under the heading, THE FACTS, on pages four, five and six. In brief, petitioner showed therein and by specific reference to the pages of the Selective Service file (Govt. Ex. 1) he had relied on the evidence of conscientious objection he had furnished, and that he had reason, because of the long course of conduct of the FBI agent, to look to the agent and was justified in looking to the agent for further procedural guidance.

The very recent case of *Batterton* v. *U. S.*, 260 F.2d 233 (C.A. 8), indicates that the rule is not to be considered inflexible. Batterton's case is comparable to that of Falbo (*Falbo* v. *U. S.*, 320 U.S. 549), whose case is the only draft law decision by this court on the exhaustion rule. Petitioner Prohoroff did not appeal, and, while many Courts of Appeal have barred defendants so situated from pre-

senting defenses, this Court has not yet considered the point. For this special reason, the Court is urged to reconsider its denial of a Writ of Certiorari.

Respectfully submitted,

J. B. TIETZ,
Attorney for Petitioner.

CERTIFICATE OF COUNSEL.

This Petition for Reconsideration is filed in good faith and not for the purpose of delay.

J. B. TIETZ,
Attorney for Petitioner.

March 20, 1959.